



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

Ari Elias Baum

Defendant.

Defendant's Affidavit
in Opposition to The
Report, Recommendation
and ORDER of Magistrate
Jeremiah J. McCarthy

14-CR-164-WMS-JJM

Ari Baum, I duly affirmed under oath that everything stated in this Affidavit is the truth, and on truth I stand before my Creator and yours to be judged by only that which lawfully guides you.

Upon my oath before my Creator and yours I affirm all of the following statement to the best of my knowledge and understanding:

The most corrupt actions of a police officer or any law enforcement agent is to attempt to validate a warrant known by him to be unlawful based on manufactured probable cause and then rubberstamped by a magistrate who is bound by his oath of office to uphold the constitution.

What we have here are:

- 1] an undermining of the Constitution for the United States of America,
- 2] law enforcement pursuing an individual because he has no understanding the reasons a Jew would become Muslim
- 3] the criminalization of a belief system and
- 4] the manufacturing of probable cause. Defendant has been under investigation since 2010...7 years, and from this 7 year investigation it was discovered that Defendant was facebook friends with someone the FBI deems questionable, and believed to be a rebel sympathizer who advocates getting rid of Al Assad of Syria(also descriptive of America), the Defendant is not afraid of death, Defendant speaks highly of it(not in terms of killing anyone, but in the same vein as Patrick Henry (a hero in American History), spoke of deathⁱ, Defendant has a friend in California who was under some kind of investigation, yet never arrested or charged with anything, Defendant commented on the beauty of a picture of a husband and wife holding a weapon depicted as fighters in a war), Defendant speaks to his friends and family

about Allaah, and Al Islaam, and Prophet Muhammad; He wants to marry a younger woman, Defendants enjoins what is good and speaks against and avoids what is not good, is against fornication and adultery, and against women working outside of the home, speaks on such topics with his friends and family and he has traveled extensively in Muslim countries, and unknow person befriended him who was assessed as an alquaeda sympathizer yet never classified as a terrorist or never proving connection to Defendant. In a nutshell, this is the sum total of the information Agent Garver had when he applied for the warrant to search Defendant's facebook pages.

4] the feigning of "good faith" . Good faith created by the falsification and the manipulation of words in the warrant application, to give the appearance that the agent believed (feigned good faith)that Defendant had committed a crime as terrible as that which he was investigated for...PROVIDING MATERIAL SUPPORT FOR TERRORIST. Since nothing turned up on the search except overpayments of U.S. government benefits, a save-face maneuver was employed and feigned good faith validated what was otherwise an unlawful search having no substantial basis in law or fact.

5. The United States, the FBI, third highest ranked law enforcement agency for the U.S., and a magistrate demonstrated an extreme and overzealous interest in a matter that could simply have been resolved between Defendant and the Social Security Administration by the repayment of any overpayments Defendant received and was not entitled to when out of the country more than 30 consecutive days. Such an alarming and unabashed interest in prosecuting Defendant for SSI overpayment when Defendant has been entitled to and receiving SSI benefits since he was 17 years old, is clearly indicative that these actions are emanating from something other than "good faith."

Magistrate Analysis of Substantial Basis under Illinois v Gates

Magistrate in error concluded there was a substantial basis under Illinois v Gates Analysis for concluding that Probable Cause Existed, i.e "there was a fair probability "that Defendant was engaged in the offence of **"providing material support or resources or concealing or disguising the nature, location, source or ownership of material support or resources, knowing or intending that they are to be used in the preparation for or in carrying out"** either one or ALL of the 30 offenses referenced in 28 USC 2339A

§32...destruction of air craft and facilities

§37... of 37(violence at international airports),

§81(arson within special maritime and territorial jurisdiction)

§175, production of biological weapons);

§229, (receipt of chemical weapons);

§351, (killing congressman or member of the executive);
§831,(transaction involving nuclear weapons);
§842(m), (import plastic explosives); n, (ship, transport or import plastic explosives);
§844, (damage by explosives); 930 (c), possession of firearms and dangerous weapons;
§956,(conspires to kill, kidnap or maim);
§1114 (killing officers and employees of U.S.)
§1116 (Murder or manslaughter of foreign officials, official guests or internationally protected persons)
§1203 (Hostage taking)
§1361 (injuries against U.S. property)
§1362 (destruction of communication lines, stations or systems)
§1363 (destroys, injures structures within special maritime and territorial jurisdiction)
§1366 (destruction of energy facility)
§1751(presidential and presidential staff assassination, kidnapping and assault)
§1992(terrorist attacks against railroad carriers, mass transportation)
§2155(destruction of national-defense material
§2156(production of defective national-defense material
§2280(Violence against maritime navigation)
§2281 (violence against maritime fixed platform)
§2233(criminal penalties)
§2332((a)use of weapons of mass destruction
 (b)Acts of terrorism transcending national boundaries
 (f) Bombings of places of public use, govt facilities, public transportation systems and infrastructure systems.
§2340A(Torture)
§2342 Unlawful Acts
42 USC 2284 Physical Damage to facilities

Analysis of Illinois V Gates

In Illinois v. Gates, the police received a highly detailed anonymous tip by way of a letter that the defendants were trafficking drugs. The police, following up on the tip, observed the defendants conducting specific activities which were outlined in the tip. On the basis of the tip and the defendants' corroborating activities, the police obtained a search warrant. Upon execution of the warrant, the police found drugs, weapons and other contraband in the defendants' automobile and home.

The letter in Gates said the defendants in Gates were selling drugs. Not one statement of the 4 informants said that the defendant was committing any crime, let alone committing

the crime of providing material or concealing material to carry out any one or all of the 30 acts listed above. In 2339A of 18USC

From 2010 when someone informed FBI that Defendant has been training in a terrorist camp while traveling in the middle east, Agent admitted this could not be substantiated. He did not mention any further information provided by the informant of any behavior they needed to look out for and observe like in Illinois v Gates.

In 2011, after the announcement that Bin Laden had been killed, Defendant allegedly told a waitress in California the meal was his last meal, and Agent claimed Defendant was driving the vehicle of a terrorism case subject. The agent never mentioned whether this terrorism case subject was arrested, any progress on his investigation, just a blanket statement that he was a terrorism case subject. He did not mention any crime the subject had committed, or whether any arrest had been made of this subject, nor did he mention the source of his information.

In 2013, two years later, one of the sources said Baum said, he is "willing to die for what he believes, as there is no greater glory to Allaah." An FBI agent risks his life everyday, as with those who are in the U.S. military fighting on all the present fronts of war are willing to die for what they believe is a cause. Because a willingness to die for a cause is not openly verbalized, they nevertheless placed themselves in positions where that is tacitly understood. Baums's statement of his willingness to die for what he believes is protected Speech under the First Admendment of the Constitution for the United States of America. The Government has not pointed out any behavior on the part of the Defendant demonstrating he was ever in a position to die or hurt others for what he believed.

Defendant allegedly encouraged his friends to keep up with current events in Syria...free speech, allegedly told them they are typical Americans...free speech, and you should be ashamed you're afraid to die."...free speech, and I am not afraid to die...free speech. There is no injured party here. Not one source observed the Defendant exhibited any behavior that Defendant put himself in harms way or put other in harms was with his speech. The sources just did not like what Defendant said. A search warrant issued on the fact that these sources did not like what the Defendant said. All free speech protected by the The United State of America Constitution First Admendment.

In April 2013, one of the sources stated that Baum was a devout Muslim...Baum's right to be devout, it's called freedom of religion, protected practice under the Constitution for the United States of America. Sources say Defendant is fixated on converting his friends and family, and so did Billy Graham, and all the other proselytizers blasting their beliefs over media to audiences spanning over the globe... it's called free speech, they just have a wider audience because they make millions for that purpose. But because Defendant is "fixated" on calling his family to believe in One God, he becomes a national threat, and defendant's behavior is classified as behavior which is indicative of providing material, or concealing materials to carry

out heinous crimes against humanity under 2339A by engaging in one or all of its 30 sections listed above. If Defendant's conduct does not fit, we must submit.

In June of 2013, Defendant allegedly told one of the sources that his behavior in the manner he dealt with women was not appropriate...free speech. Defendant referred to a photo of one of the sources as "walking dead" ...free speech. "Careful of your tongue, denier." Agent said this was "slander."

Slander is spoken speech not written speech. To write that a person is a denier is free speech. To write "walking dead" is free speech. The movie "Walking Dead" written by Robert Kirkman depicted people who had no human emotions, and to survive had to live off of the living. The writer and producer of that movie was not investigated for this form of free speech, rather he was allowed to make millions of dollars and lauded for such a great depiction.

The source referred to Defendant's writings as "Jumbled and ranting, becoming less coherent and inarticulate." This statement is an opinion, that the source is entitled to. However to convert Defendant's free speech as indicative of the crime of providing material support or concealing material support to carry out any one or all of the offenses listed above under 2339A of UCS 18, is to render the Law of the Land a nullity, and allow government agents under the guise of "good faith" to literally annihilate the rights of the people in their lawful pursuit of life, liberty and happiness. Free speech, freedom of religion, Freedom of travel all freedoms protected by the Constitution of the United States of America.

In July, Defendant was said to have made a reference to the Mahdi...free speech. The Agent stated that he "understands the Mahdi to be the 12th Imam whose return to Earth will coincide with the return of Jesus Christ to earth to engage in a war against non-believers.

In the Bible, specifically Matthew 10, :34-36 states that Jesus (as) said:

"Do not suppose that I have come to bring peace to the earth. I did not come to bring peace, but a sword. For I have come to turn a man against his father, a daughter against her mother, a daughter-in-law against her mother-in-law. A man's enemies will be the members of his own household"

If Jesus said all of this on regarding his coming second return to earth that he is bringing a sword, and not to bring peace, then why does the United States allow this form of speech to be taught in the churches, all across the United States and allow the books with this language to remain on shelves, and not investigate every preacher and Christian proselitizer for promoting material in support of violence and terrorism.

Yet when the Defendant mentions the Mahdi, and admittedly the agent say of his understanding of the Mahdi: "the return of the Mahdi to earth will coincide with the return of

jesus Christ to earth, to engage in war against non-believer", Defendant is deemed a suspect for providing material support to terrorists.

If these two ideologies "coincide", this begs the question as to why the Defendant is being investigated and search warrants being issued against defendant from speaking about the Mahdi. What makes a comment about the Mahdi indicative of the defendant Promoting material in support or concealing material in support of carrying out any one of the offenses against humanity listed above in section 2339 of USC18. Is this Free Speech for Christians and not free speech for a Muslim Jew? Who did the Defendant harm or hurt with this speech. Who was the injured party, or did the person just not like what was said. Disliking what an individual speaks has never been a rationale for suppressing free speech under any aegis of authority. This is precisely why the klan, Aryan nations, devil worshipper and any other group can speak and promote their beliefs in America, but a Muslim Jew can't.

Defendant in August 2013 wrote on his facebook page, "too dangerous to fly." Free speech. If you are on a no-fly list, what does that mean? It means you have been targeted as 'too dangerous to fly' . It turned out to be unsubstantiated and Defendant was allow to fly.

In 2013 the Government was aware that Defendant was under investigation since 2010, and they knew he was on the "no-fly list" because they placed him on the no fly list. So why does the comment "too dangerous to Fly" justify a warrant on suspicion that the Defendant is engage in the offense of promoting materials and resources to carry out any one or all of the sections of 2339A listed above. Too dangerous to fly is PROTECTED FREE SPEECH.

Defendant Commented on a photo captioned "husband and wife fighting for Islam" and commented stating the most beautiful photos I have ever seen." This is FREE SPEECH.

Brandenburg v. Ohio, 395 U.S. 444 (1969), a landmark United States Supreme Court case based on the First Amendment to the U.S. Constitution. The Court held that government cannot punish inflammatory speech unless that speech is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action". Specifically, it struck down Ohio's criminal syndicalism statute, because that statute broadly prohibited the mere advocacy of violence.

Criminal syndicalism has been defined as a doctrine of criminal acts for political, industrial, and social change. These criminal acts include advocating of crime, sabotage, violence, and other unlawful methods of terrorism.

The Ohio Act properly made it illegal to advocate or teach doctrines of violence, but did not address the issue of whether such advocacy or teaching would actually incite imminent lawlessness. The mere abstract teaching of the need or propriety to resort to violence is not the same as preparing a group for violent action. Because the statute failed to provide for the second part of the test it was overly broad and thus in violation of the First Amendment of the Constitution.

The government has not pointed out any speech of the defendant or any conduct by the Defendant which was "directed to inciting or producing imminent lawless action and is likely to incite or produce such action". All of Defendant speech either written or spoken merely caused a reaction of dislike for what was said by the Defendant and not a reaction to any harm that flowed from his speech.

On the other hand, Pamela Geller, an American political activist and commentator known for her anti-Islamic campaign, sponsored the "Draw the Prophet" cartoon contest in Garland, Texas, in 2015, where her speech and activities incited violence where 2 men were killed and one was shot. She has been lauded for her bravery in insulting the Prophet of a major Religion under the freedom of speech protection of the Constitution, irrespective of the violence incited by her speech.

The government attacks on Defendant's Free speech is tantamount to grappling for straws for a conviction and is a cold-blooded representation of police misconduct especially when that misconduct is surreptitiously promoted as "good faith", a puny and baseless reason to even "suppose that his speech or conduct meets the test of Substantial basis espoused in *Illinois v Gates* to support a search warrant. The government has not demonstrated any speech by the Defendant or conduct observed which indicated that Defendant provided material support and resources to carry out the 30 section of offenses listed above in violation of 2339A of 18 USC.

If this warrant is allowed to stand then, with this case, free speech disliked by anti-Islamic mindsets, or just dislike period, will unleash the most heinous violations of Fourth Amendment rights and vilify those principles that undergird American jurisprudential legacy...that all men are created equal have certain unalienable rights and among them are life, liberty and the pursuit of happiness, all secured by the Constitution for the United States of America.

Justice Kenney wrote in *Texas v Johnson* 491 U.S. 397 (1989):

"For we are presented with a clear and simple statute to be judged against a pure command of the Constitution. The outcome can be laid at no door but ours. The hard fact is that sometimes we must make decisions we do not like. We make them because they are right, right in the sense that the law and the Constitution, as we see them, compel the result. And so great is our commitment to the process that, except in the rare case, we do not pause to express distaste for the result, perhaps for fear of undermining a valued principle that dictates the decision. This is one of those rare cases."

The Justice put their political and personal persuasion and likes and dislikes to the side in the Texas flag burning case and stood on long standing principle of jurisprudential legacy and as guardians and preservers of the principle embodied in the First Amendment, though they disliked the idea of burning an American flag, the First Amendment was not impaired by the irrationality of their emotions.

Similarly the Defendant's case before the bar must stand on those same principles which the Constitution compels and preserve Defendant's Constitutional rights under the First Amendment and not allow the dislike of his speech to be a subterfuge for police misconduct to obtain a warrant.

It is not permissible for a magistrate to ratify the bareboned conclusions of the Agent. Everything Defendant is alleged to have said was free speech. Nothing in Defendant speech is was indicative that he had provided material support or conceal material support to carry out any of the offenses listed unde 2339A

Last but not least, Yarbroud, a facebook friend of Defendant, is seen as someone symphathetic toward Syrian rebels. The rebels have something in common with the United States, they both want to get rid of Al assad, President of Syria. Government has no other information on Defendant's connection with Yarbroud other than facebook connection . Even after the search took place, no other connection was established. Because you have a facebook friend postings showing a sympathy and compassion for the cause of the rebels in Syria, who are fighting against the same government U.S. is supplying and participating in fighting against.

The magistrate concluded that there was "sufficient probable cause to support a search for evidence related to providing material support to terrorists, in violation of 18 U.S.C. 2339A, whether in communications with Yabroody or others."

This conclusion of law failed to identify any facts which would support obtaining a warrant to search for evidence of providing material support to terrorists. The magistrate concluded that because Yabroody posted on Defendant's page, that this is "communication" between Defendant and Yabroody." And hence the mere fact that a person is assessed to have access to Alqaeda groups who posts on your facebook page, you are providing material support to terrorists. While Yabroody was never labeled a terrorist, it is therefore unclear to what Yabroody's status really is, since none of the information obtained by Agent Garver was from personal knowledge or was ever substantiated. The assessment of Yabarood was based strictly on his face book postings.

Next the magistrate states that the government “demonstrated defendant’s conduct transcended lawful religious proselytizing of Islam.” Yet neither Agent Garver, the Government nor the magistrate described the conduct of Defendant that “transcended lawful religious Proselytizing of Islam, nor did the magistrate provide any case law which delineates between “lawful proselytizing of Islam” and “unlawful proselytizing of Islam to support this line of reasoning. This appears at best to be a self-indulged definition of “transcending lawful Proselytizing” or new law.

The question not answered by the magistrate is when does proselytizing cross the boundaries and translate into “providing material support for terrorists.” These empty conclusions do not meet the requirement of substantial basis under Illinois v Gates, nor do the Magistrate’s empty conclusions demonstrate the common sense approach or the neutrality with which he should be cloaked.

Yarbrood made a statement he kissed the ground when he arrived in Syria. The Pope does the same thing. The assessment of Yarbrood, as a Syrian rebel sympathizer has nothing to do with Defendant simply because he is a facebook friend. It is a well known fact that friends on facebook in most instances don’t ever know each other. Government found no other connection between Defendant and Yarbrood during the investigation prior to applying for the warrant or afterwards for that matter.

Government pointed to no comments Defendant made about any of Yarbrood’s post or any comments they made to each other. The fact alone that Defendant was face book friends with a person who was assessed to have access to Syrian groups considered having Alquaeda influences made Defendant a target for a warrant application. Agents had no other information to corroborate the information that the FBI saw on Yarbrood’s face book page.

Not one of the statements of the 4 sources who reported to FBI agent mentioned anything about any particular facebook friends of the Defendant which would corroborate the agent’s inference that somehow Defendant and Yorbrood were connected and possibly radicalized the Defendant. This connection was too remote to justify application for a warrant. Other than the two being facebook friends, FBI admitted that “nothing else can be assessed about the nature of the relationship.”

If the FBI had nothing to go on and admitted there was nothing to go on, this punctures severely the validity of any good faith argument to support an unlawful warrant. Not one single proffer of any corroboration for this agent’s hypothetical that being friends on face book with Yabrood, and no other connections substantiated, is conduct that provides a substantial basis that probable cause exist that Defendant provided material support to terrorists.

The Justice put their political and personal persuasion and likes and dislikes to the side in the Texas flag burning case and stood on long standing principle of jurisprudential legacy and as guardians and preservers of the principle embodied in the First Amendment, though they disliked the idea of burning an American flag, the First Amendment was not impaired by the irrationality of their emotions.

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Furthermore the Social Security Administration, advises that if a person reports changes late or not at all and overpayment occurs, it will be required that the recipient pays it back. The official website of the SSA does not promote prosecution for overpayments.

Why has the United States of America, through the Federal Bureau of Investigation and the U.S. Attorney's Office find Defendant's overpayment while overseas for more than 30 days to be of significant interest, warranting the United States of America to criminally prosecute Defendant in light of this advice given on Social Security help websites:

"Supplemental Security Income (SSI): The Social Security Administration also handles SSI benefits. In contrast to Social Security Retirement and Social Security Disability benefits, SSI benefits are not based on your work record. SSI is a needsbased program, meaning you have to have low income and low assets to get SSI. If you get SSI and leave the United States for more than 30 days, your SSI benefits will stop and will not start up again until you are back in the United States for at least 30 days. If you need continuous benefits in order to pay for your living expenses (e.g. housing costs), you should limit your vacation to less than 30 days.

It is very important that you tell the Social Security Administration about your vacation if you plan to be outside the United States for more than 30 days. If they don't know and your SSI benefits continue to be paid to you while you are outside the country for more than 30 days, you will get an "overpayment." An overpayment will cause the SSA to reduce or stop your benefits altogether until the overpayment is paid back."

The following text came from the official Social Security website:

OVERPAYMENTS

WHAT IS AN OVERPAYMENT?

An overpayment is when you receive more money for a month than the amount you should have been paid. The amount of your overpayment is the difference between the amount you received and the amount due.

WHAT CAN CAUSE AN OVERPAYMENT?

- our income is more than you estimated
- Your living situation changes.
- Your marital status changes.
- You have more resources than the allowable limit.
- You are no longer disabled and continue to receive benefits.
- You do not report a change to us (on time or at all) as required.
- We incorrectly figure your benefits because of incorrect or incomplete information.

WHAT WILL WE DO IF THERE IS AN OVERPAYMENT?

We will send you a notice explaining the overpayment and asking for a full refund within 30 days. If you are currently getting payments and you do not make a full refund, the notice will:

- propose to withhold the overpayment at the rate of the lesser of 10 percent or the entire monthly payment;
- state the month the proposed withholding will start;
- fully explain your appeal rights;
- explain how you can ask us to review and waive the overpayment, so you may not have to pay it back; and
- explain how you can appeal our decision.

WHAT CAN YOU DO IF YOU GET AN OVERPAYMENT NOTICE?

If you believe you were not overpaid, you may request a reconsideration.

If you ask for an appeal within 10 days from the date you receive the notice, any payment we are currently making will continue until we make a determination. **If you believe that you may have been overpaid, but feel that it was not your fault:**

- ask for a waiver of the overpayment; and
- ask for and complete form SSA-632 (request for waiver).

If necessary, we will help you.

You can ask for a waiver at any time.

If we grant you a waiver, you will not have to repay all or part of the overpayment. Generally, for us to grant you a waiver, you must show that:

- It was not your fault that you were overpaid; and
- You cannot pay back the overpayment because you need the money to meet your ordinary living expenses. You may have to submit bills to show that your monthly expenses use up all of your income and that it would be a hardship for you to repay.

IF YOU ARE NOT SURE WHAT CAUSED THE OVERPAYMENT, YOU MAY ASK FOR A RECONSIDERATION, OR A WAIVER, OR BOTH.

You may ask to see your file to see the information we used in figuring the overpayment. You may have us explain the reason for the overpayment while you are examining your file.

WHAT IF THERE WAS AN OVERPAYMENT AND WE DO NOT GRANT YOUR REQUEST FOR A WAIVER?

You can request a reconsideration of Social Security's denial of your request for waiver. If we continue to deny your waiver request, you will have to pay back the overpayment or have it withheld from your monthly benefits.

You can ask us to withhold less than the proposed amount each month, or you can arrange to make monthly payments if you no longer receive Supplemental Security Income (SSI) benefits.

“If you no longer receive SSI, we may withhold your overpayment from a Federal Income Tax refund and/or from any future Social Security benefits you may receive. If you become eligible for SSI in the future, we will withhold your overpayment from future SSI payments. ”

End of website information

The information contained on the website, does no promotes criminal prosecution for overpayments and the Administrations of SSI benefits does not permanently discontinue benefits for overpayments. It appears that the government's interest is purely malicious for reasons unknown to the Defendant.

WHEREFORE, for all of the foregoing reasons, I rely on this court to uphold its OATH OF OFFICE

TO SUPPORT AND IMPLEMENT THE DICTATES OF THE PRINCIPLES OF THE Constitution for the United States of America, and dismiss the charges and declare the warrant constitutionally deficient in all of its four corners.

Respectfully submitted

Ari Elias Baum

"Give me liberty or give me death"

*affirmed and subscribed
before me this 21st day
of April 2017*

